



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, FFT

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenants applied for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice), pursuant to section 46;
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 1:51 P.M. to enable the landlord to call into this teleconference hearing scheduled for 1:30 P.M. The landlord did not attend the hearing. Tenants SM (the tenant) and RV attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenants and I were the only ones who had called into this teleconference.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00."

I accept the tenant's testimony that the landlord was served with the notice of hearing and evidence (the materials) by registered mail on October 01, 2022, in accordance with section 89(1)(c) of the Act. The tenant mailed the materials to the landlord's address for service (the ERI address), which is recorded on the Notice. The tracking number and the ERI address are recorded on the cover of this decision.

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail the landlord is deemed to have received the materials on October 06, 2022 in accordance with section 90 (a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

#### Preliminary Issue – Correction of the tenant's name

At the outset of the hearing the tenant corrected the spelling of his first name.

Pursuant to section 64(3)(a) of the Act, I have amended the tenants' application.

#### Issues to be Decided

Are the tenants entitled to:

1. Cancellation of the Notice?
2. An authorization to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the evidence of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the Notice.

The tenant affirmed the tenancy started in March 1999. Monthly rent is \$1,287.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$385.00 was collected and the landlord holds it in trust. The tenancy agreement was submitted into evidence.

The tenant affirmed that he deposited a cheque to pay rent due on September 01, 2022 in the landlord's mail slot on August 29, 2022. The resident manager left the rental building, and the cheque was cashed on September 06, 2022.

The tenant submitted a copy of the cheque dated September 01, 2022 in the amount of \$1,287.00 and a bank document indicating it was cashed by the landlord.

The tenant confirmed receipt of the Notice on September 13, 2022. A copy of the Notice was submitted into evidence. It is dated September 07, 2022 and the effective date is September 26, 2022. It indicates the landlord's address for service is the ERI address and that the tenant failed to pay rent in the amount of \$1,227.00 and utilities in the amount of \$60.00 due on September 01, 2022.

The tenant submitted this application on September 16, 2022 and continues to occupy the rental unit.

The tenant affirmed that there are no rental or utilities arrears.

### Analysis

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

In most circumstances this is the person making the application. However, in some situations, the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Based on the tenant's undisputed testimony, I find the tenant received the Notice on September 13, 2022. I find the tenant disputed the Notice within the timeframe of section 46(4) of the Act.

Section 26(1) of the Act states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Based on the tenant's undisputed and convincing testimony, I find the tenants must pay monthly rent of \$1,287.00 on the first day of the month.

I accept the tenant's undisputed and convincing testimony that he left a cheque in the landlord's mailbox on August 29, 2022. Per section 90 (d) of the Act, the landlord is deemed to have received the cheque on September 01, 2022.

Based on the tenant's undisputed and convincing testimony, the copy of the cheque and the bank document, I find the tenant paid rent and utilities due on September 01, 2022 on the due date.

Section 46(1) of the Act states:

Within 5 days after receiving a notice under this section, the tenant may  
(a) pay the overdue rent, in which case the notice has no effect, or  
(b) dispute the notice by making an application for dispute resolution.

Per section 46(1) of the Act, as the tenant paid the rent due on September 01, 2022, the Notice is cancelled. The landlord could not have issued the Notice, as the tenants paid rent on the due date.

As the tenants are successful with their application, pursuant to section 72 of the Act, I authorize them to recover the \$100.00 filing fee. I order that this amount may be deducted from a future rent payment

### Conclusion

The Notice is cancelled and of no force or effect. The tenancy continues until ended in accordance with the Act.

Pursuant to section 72(2)(a), the tenants are authorized to deduct \$100.00 from their rent payment for December 2022 to recover their filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 01, 2022

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Residential Tenancy Branch